IN THE UNITED STATES SUPREME COURT

RANDOLPH CREWS)
)
Plaintiff,)
)
V)
)
DEPARTMENT OF THE ARMY,)
)
Respondent)

(1)

DOCKET NO. 99-1166

"On Petition For Writ of Certiorari to the
United States Court of Appeals for The Fed. Cir."

MOTION FOR LEAVE TO PROCEED
AS VETERAN (S Ct Rule 40.1)

MARIAN E. SULLIVAN
Attorney for Respondent
Department of Justice
Civil Division, 8th Fl
1100 L Street, NW
Washington, DC 20530
Tele: (202) 307-6288

RECEIVED
JAN 10 2000
OFFICE OE THE CLERK
SUPREME COURT, U.S.

VETERAN
Randolph Crews
570 Bellerive, Drive
Apt. #246
Annapolis, MD 21401-2435
Tele: (410) 216-9714

32 pp

IN THE

SUPREME COURT OF THE UNITED STATES

CLERK OF THE UNITED STATE SUPREME COURT

MOTION-FOR LEAVE TO PROCEED AS A VETERAN
(S Ct Rule 40.1)

Pursuant to Rule 40.1 of the Rules of this Court, The United States Supreme Court, I, Randolph Crews, Petitioner herein, respectfully moves the Court for leave to proceed in this cause as a veteran, and accordingly, to be allowed to proceed on typewritten paper. S Ct. Rule 33.2.

By means of Appendix D-1 through D-5, I, Randolph Crews, do declare under penalty of fraud and perjury that I am said Disable Handicap veteran, Qualified to bring said action under the Universal Military Training and Service Act to established reemployment rights under that statue. U.S.C.S., Section 2022. Due to said provision of law exempting said veteran from payment of fees or court cost, I do affirm any intentional false statements in this pleading or willfull misrepresentation relative thereto is a violation of the law punishable by a fine or imprisonment or both. (18 USC 1001).

A veteran may seek review in Federal Court on the ground that the Agency's decision was Arbitrary, unreasonable, capricious, or not supported by substantial evidence, or that it departed from required standards of procedural due process. Dozier v. US (1973, CA 5 Tex.) 473 F 2d 866.

Public Law 103-353, Section 4300, defines this Court JURISDICTION BY MEANS OF THE VETERANS' PREFERENCE ACT 5 USCS SECTION 7512.

Therefore, I affix my signature ~~to~~ same,

RANDOLPH CREWS

STATEMENT OF THE CASE

As a 30 per-cent disable handicap veteran with "unlimited reinstatement rights." The Federal Court of Appeals is saying by means of cited Appendix A-1 through A-5, Agency has proved by "clear and convincing" evidence that it would have fired Plaintiff anyway without his protected disclosure in a job related injury! 5 USC 7701(c)(2)(b); See 5 USC, Section 1221(e).

Being that is so, Plaintiff beg for Writ of Certiorari for agency could not in anyway fire Plaintiff in violation of Chapter 7512 without "face to face hearing," or "advance notice and adverse decision" and not be in violation of Section 2302(b)(8), 5 CFR Section 2302(b). See Section 14 of WPA, codified at 5 USC, Section 1221(e)(1)(A)&(B)(1994).

Planitiff beg for Writ of Certiorari For Appendix D-3 shows Board did have jurisdiction due to "subject matter," therefore, Plaintiff did not get a fair examination of his record according to FRCP 56(f). See Gregory V. Office of Personell Management, 66 M.S.P.R. 691,697, Aff'd 64 F .3d 677 (Fed. Cir. 1995)(Table). 5 USC Section 7701(a)(1)(b)(1):

A- "Reinstatement," failure to reinstate according to grade and time is an adverse personnel action, directly appealable to the Board! 5 USC, Section 2302(b)(8); (Pub. Law 89-554, Section 1, 80 Stat. 528, Sept. 6, 1996); Sec. 7512.

B- "Gross Mismanagement and Abuse of Authority," Congress has always wanted to protect! See S. Rep. No. 413, 100th Cong., 2d Sess. 13 (1988), The Senate Report contains the following language:"The Committee intends that disclosures be encouraged. The OSC, the Board and the Courts should not erect barriers to disclosures which will limit the necessary flow of information from employees who have knowledge of government wrongdoing!"

C- Therefore, Plaintiff February 20, 1995 letter to the IG which led to her investigation, Appendix G-1 before any letter of warning that Plaintiff was being fired, the Board should have upheld Plaintiff's rights to a hearing!

D- Not With Standing, Agency's confessed wrongdoing! Appendix G-2; Paragraph two of Appendix H-1 which contradicts the letter of Termination! Appendix E-1, E-2.

/

STATEMENT OF THE CASE

Plaintiff beg for Writ of Certiorari for the Federal Court of Appeals has given the Agency "Presumption of Innocence" for Plaintiff had no idea he was being fired for he had received no 30 days notice or any letter of warning nor did Agency file any record of same!

Plaintiff beg for Writ of Certiorari for OPM as promulgator of rules and regulations says at 5 CFR, Section 752.403 "Standard for Action:"(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by Title 5 USC, Section 2302! The issue of whether an action is a personnel action focuses on the nature of the action at issue, not on the status of the employee who is the subject of the action. A termination of an employee, regardless of whether he or she has an appeal right under chapter 75 of title 5, is a disciplinary action! See Wren v. Dept. of Army, 2 MSPB 174, 2 MSPR 1 (1980), aff'd, 681 F .2d 867 (D.C. Cir.1982). So, "DECEPTION," is a Prohibited Personnel Practice! Plaintiff was in an approved pay status of LWOP! 5 CFR, Section 752.402 says:"A current continuous employment means a period of employment or service immediately preceding an adverse action in the same or similar positions without a break in Federal Civilian Employment of a workday!"

If the agency does grant LWOP, What is the BOARD's attitude? The Board has said:"It is presumed that agency officials made a determination that the employee's duty presence was not required! So, in Webb v. USPS, 10 MSPR 536 (1982), the Board said:"The LWOP period should not be considered against the employee as a basis foradverse action. It would be inequitable to allow the agency to take action against the employee based on the use of approved leave, and it would also be contrary to 5 USC Chapter 63 and 5 CFR Part 630, entitling an employee to use annual and sick leave within prescribed circumstances and limitations!" Corrective action was a must!

That's why Plaintiff begs for Writ of Certiorari for in Crews v. the Department of the Army, The Supreme Court has before it "Egregious Conduct." See Kolstad v. American Dental Ass'n, 139 F.3d 958, 76 Fair Empl. Prac. Cas. (BNA) 1321, 150 A.L.R. Fed. 777 (D.C. Cir. 1998). Said Employer, with malice aforethought did intend to injury one Randolph Crews!

STATEMENT OF THE CASE

Plaintiff had a job-related injury! That is the focal point of Crews v. Department of the Army! For more than 120 days, A.J. Martin as the Manager of Disability Claims for Workers' Compensation, did willfully, knowningly create an employment environment with greater stress and tension than a worker must ordinarily experience!

Appendix D-4 shows everyone in full-time employment in Germany received a "post allowance!" 5 USCS, Section 5941 says:"The Sec. of State may establish a foreign post allowance for any place when, and only when, the place involves any one or more of the following:'(a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthful conditions.'" THEREFORE, before Plaintiff ever entered said employment, A.J. Martin as Dir. of 266th Finance knew that it was imperative that he adhered to OWCP's "Medically and Vocationally Suitable" Provision! 20 CFR 10.123(f)(b). Hence, Plaintiff begs for Writ of Certiorari for the Tort Provision of the Workers' Compensation Law says:"If the employer knew the consequences of its acts, or was substantially certain of them,and went ahead anyway, it is treated by law as desiring the resulting injury!" See Keating v. Shell Chemical Co. (CA 5 La), 610 F.2d 328. Workers' Compensation, Section 75, 82 Am Jur 2d.

Plaintiff beg for Writ of Certiorari for in this context, it has been said that "serious and willful misconduct" is not equivalent to mere negligence, or even gross negligence, but is basically the antithesis of negligence, and involves a deliberate act for the purpose of injuring another, an intentional act with knowledge that serious injury is a probable result, or an intentional act with a positive and reckless disregard of its possible consequences. Workers' Compensation, Section 408, 82 Am Jur 2d. See Johns-Manville Sales Corp. V. Workers' Compensation Appeals Board (2nd Dist) 96 Cal App 3d 923, 158 Cal Rptr. 463.

Therefore, Plaintiff beg for Writ of Certiorari to sue said employer as "his Options" as provided by the "tort" Provision of OWCP's for $25 million dollars as an exception for this "Cruel and Unusual Punishment" of one with a known Disability! Said request is also in accord with Supreme Court definition of "Willfulness," as, "The Employer either knew or showed a reckless disregard for the matter of whether its conduct was prohibited," in this case, Workers' Compensa-

tion law of a job must be "Medically and Vocationally Suitable!" See Bekins Moving & Storage Co. v. Workers' Compensation Appeals Board (1st Dist.) 103 Cal App .3d 675, 163 Cal Rptr. 213. Sec. 408, OWCP's, 82 Am Jur 2d; 96 ALR 3d 1064.

Both the Board and the Court of Appeals knew the legislative history of the WPA shows that Congress also intended the term " gross" to reflect something blatant or out of the ordinary.

S. Rep. No. 413, 100th Cong. 2d Sess.13.

BLACK's LAW DICTIONARY 702 (6th ed. 1990), defines gross as, "[o]ut of all measure; beyond allowance; flagrant; shameful; as a gross dereliction of duty, a gross injustice, ...Such conduct as is not to be excused!" A.J. Martin knew in September of 1994 that in was in the "best interest of the government" to move Crews and his family and household goods (that are now in the hands of the German Marshall), to Heidleberg Germany to comply with Workers' Compensation humane provision of 50 miles commuting to work provision for new hire! 5 USC, Section 5722 (a)(b)(c)(1).

Plaintiff beg for Writ of Certiorari for Plaintiff did not get the opportunity to "make his case whole" that agency knew it should have transferred Randolph Crews "back to work" at either Heidleberg Germany or Baumholder in keeping with Doctor Schnellbacher medical advise that it was not "Medically or vocationally suitable" in 1995 for a sixty-years old man to commute 100 miles per day to and from work! 20 CFR Section 10.505, "The term 'return to work' is not limited to returning to work at the employee's normal worksite or usual position, but may include returning to work at other locations and in other positions!" FRCP 56(F).

Plaintiff beg for Writ of Certiorari for agency's admission of having workers' compensation forms from Plaintiff to the Baumholder Inspector General at Appendix G-2 is deliberately deception and a willfull violation of Workers' Compensation Law 20 CFR 10.23(c):"Any person charged with the responsibility of making reports in connection with an injury who willfully fails, or refuses to do so; or willfully retains any notice, report, or paper required

in connection with an injury, is subject to a fine or imprisonment."

Planitiff beg for Writ of Certiorari for agency's "flagrant" and willfull violation of the humane provisions of Workers' Comp. (1) should have been moved to within 50 mile commute area due to job must be "medically and vocationally suitable!" (2) Monica Dean should have provided emergency medical care within four hours of Job related traumatic injury January 10, 1995 or She was obligated to provide a CA-7 Form no later than 48 hours (Jan 12,95), and could have as late as January 17, 1995 for they had Dr. Schnellbacher Appendix D-5 by Inter-Agency next day mail services! (Baumholder to Heidleberg). (3) CA-17 Duty Status Report should have been received by Plaintiff and said Doctor long before Plaintiff filed his complaint with the Baumholder IG Office, Tuesday, February 21, 1995, which was within the 50 miles commutting area of Plaintiff's home and treatment! (4)" When an employee is disabled by a work-related injury and loses pay for more than three(3) calendar days, the employer shall furnish the employee with Form CA-7 for the purpose of claiming compensation." 20 CFR 10.111; (5) "Even though a claim is controverted (Agency's Rights), The agency must continue the employee's regular pay unless it can prove to OWCP's by any of the 9 reasons set forth by law!" 5 USC 8101 (1) (B) or (E); (6)"If the employer doubts that the injury occurred, or that it is work-related, he or she should authorize medical care by completing Form CA-16 and checking block 6B of the Form." 20 CFR Section 10.302.

Why didn't Agency comply with said instruction? Because, They knew A.J.Martin had created an employment environment with greater stress and tension than a worker must ordinarily experience forsaid Agency had verifiable medical documentation that the job was "Medically and vocationally not suitable!" 20 CFR 10.123(f) (b). Hence, Plaintiff beg for Writ of Certiorari for the stiffest penalty the law will allow in Compensatory and Punitive Damages! S Ct. 42.

Plaintiff beg for Writ of Certiorari for while these rights are provided by the FECA, the pertinent section of the law is control by OPM! Retention Rights, 5 CFR 353, 302, and 330. THEREFORE, said laws provide:"An employee hired before January 1, 1984 will retain

STATEMENT OF THE CASE

Civil Service Retirement Act rights if reemployed by a Federal agency, regardless of the lenght of time he or she has been receiving compensation, and regardless of whether he or she is in LWOP status or SEPARATED!" 5 CFR Section 353.103 says:(b)"The provisions of this part concerning employee injury cover a civil employee in any branch of the Government of the United States;" 353.104 says:"When an agency separates, or fails to restore an employee because of compensable injury, it shall notify the employee of his or her rights, obligations, and benefits relating to Government employment, including any appeal and grievance rights!" PLEASE NOTE WHY WRIT OF CERTIORARI IS A MUST:" **regardless of notification**, an employee is still required toexercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by chapter 43 of title 38, USC, for restoration after or as soon as he or she is able after a compensable injury!" Section 353.107 says:"Upon reemployment, an employee absent because of compensable injury is generally entitled to be as though he or she had never left. This means that a person who is reemployed following fully recovered from compensable injury receives credit for the entire period (6yrs.) of the absence for purposes of rights and benefits based upon seniority and lenght of service, including within-grade increases, career tenure, completion of probation, leave rate accrual, and severance pay!"

Because, the firing of Plaintiff was senselessness and agency admitts in paragraph four of Appendix E-1 that they knew Plaintiff had preference status and 5 CFR Section 315.401 says:"There is no time limit on the reinstatement eligibility of a preference eligible or a person who completed the service requirement for career tenure. or (10) periods of nonemployement during which a person is eligible for injury compensation under the Office of Workers' Compensation P." Being that is so, Plaintiff beg said reinstatement be at his VRA Special hiring rights up to GS-11, 38 USCS Section 4213 and plaintiff also beg that the FLSA of 1938 and its Amended (29, USC 201, et seq.), Pub. 1318, Rev. July, 1997 which supercede State Comp. Law and by analogy WPA provide Section 15 (a)(3) of the FLSA which prohibits discharge or retaliation in any matter where a employee file a complaint, institute a proceeding (IG), and "shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of this scetion, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained in any Federal or State Court of competent jurisdiction by any one!"

STATEMENT OF THE CASE

Since, said provision sets no equitable limitation, Plaintiff beg that said 25 years of Federal credit adhere to OPM 5 CRF Section 353.106 (c) provision:"An agency promotion plans must provide a mechanism by which employees who are absent because of compensable injury can be considered for promotion;" 5 CFR Section 8151 n19 " rights of employee whose recovery takes longer than one year are analogous to those of employee recovering within one year with respect to the positions for which he is to be considered." Phillips v. Department of Transp., M.S.P.B. 1984, 22 M.S.P.R. 223.

Because of said job retention---provision and agency's legal obligations to pay plaintiff his bi-weekly salary, Plaintiff begs that said allegation in Appendix G-1 to the IG, "An inquiry revealed that the individual put in a request for advance sick leave," IS DECEPTION! The Workers' Compensation Law defined "GROSS NEGLIGENCE," "As that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the persons to be effected by it." Burk Royalty Co. V. Walls (Tex) 616 SW2d 911, rehg of cause overr (Jul 1, 1981).

Appendix D-3 shows Plaintiff's Service Comp. Date as 03-09-80 and Appendix D-2 shows Plaintiff's official release from the Air Force as being, May 03, 1962, hence, Plaintiff begs that his entire Federal credit now adhere to 25 Years of Federal Credit for this flagrant disregard of Plaintiff's rights. In Lo Dolce v. Regional Transit Service, Inc., (1980, 3d Dept.), 77 App Div 2d 697, 429 NYS 2d 505, affirming a decision of the Workers' Compensation Board, the court held that the discharge of the plaintiff, because of lost time due to an employment-related accident, explicitly violated the provision of the Workers' Compensation Act prohibiting thedischarge of, or discrimination against, an employee who claims or attempts to claim workers' compensation. Therefore, of this same case, the courts have said:"The employee is typically entitled by statue to continuing compensation for temporary disability, and this implies at least a limited right to be absent!" ID. YOU HAVE EGREGIOUS DEF.

"The Best Interest of the Government" is not served by firing in a job related injury! 20 CFR Section 10.123(F) or 5 USC Section 5722 by means of agency "malicious abuse of legal process!"

OWCP's is a form of strict liability, hence, Plaintiff should have been compensated for his job related injury! OWCP's Sec.1.

STATEMENT OF THE CASE

Plaintiff beg for Writ of Certiorari in accord with Board's 5 USC Section 1214 (g)(2) which provides for back pay, and related benefits that upon reinstatement that Plaintiff received 90 days advance leave here in America with lease car agreement, medical costs, (Wife spent 7 days in aGerman Hôspital and Plaintiff spent 13 days), it also provide for travel expenses,(return to Germany for a period of 90 days only with housing and renewal travel agreement, lease car with full base privileges), and any other reasonable and forseeable consequential damages. (As amended Oct. 29, 1994, P.L. 103-424, ss 3(c),(d), 8(a), 108 stat. 4362,4364); See also P.L. 103-424, 1994, wherein the Office of Special Counsel said:"reprisal will not be tolerated" and provided for "consequential" damages such as medical costs and travel expenses associated with pursuing the case!" Therefore, Plaintiff beg that upon reinstatement that said return to Germany, Idar-Oberstein, that Plaintiff hire a Germany Attorney to clear up any and all debts associated with this unjust dismissal and that same be payable at Baumholder Military Finance Center or at Ramstein AF and be it already understood that we are at $18,000 dollars for the lost of our household goods that have been in the hands of a German Marshall since June of 1996! (Travel will be at first-class for medical reasons both domestic and foreign).

Plaintiff will be transferred to Lisbon Portugal due to this physical and emotional duress associate with this Traumatic experience in Germany and America! (See MSPB Doc. No. SF-0752910971-X-1, Jul.94).

Plaintiff begs that Writ of Certiorari so order according to 5 USCS, Section 1204, (note 5) under Jurisdiction that Merit Systems Protection Board has exclusive continuing jurisdiction over employee's claims for determination of amount of back pay because Public Law 101-509 does allow for hiring up to GS-11, so back pay should be at Management Analyst with 25 years of Federal Credit! See Shellman V. U.S. 1986, 9 Cl Ct 452, "It was ruled the Board could reinstate and award backpay based upon 'exclusivity analysis'."

Agency knows it has advance "Malicious abuse of legal process" and Plaintiff beg for treble compensatory damages! Williams v. Hall No. Ashland 84-149 (E.D. KY., June 10, 1988).

STATEMENT OF THE CASE

Plaintiff beg for Writ of Certiorari for the harmless error rule FRCP 61, is applicable to pleadings. Goodman V. United States (1968, CA9 Cal) 398 F2d 879. In addition, 28 USCS, Section 2111 provides that, any Writ of Certiorari in any case, the Court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

Hence, Plaintiff has noother relief and has exhausted administrative remedies in spite of Costin v. Dept; of Health and HUMAN Service, Aff'd 64 F .3d 675 (Fed. Cir. 1995)(Table), Wherein it was said:"The Whistleblower Protection Act (WPA) is a remedial statue; As such, it should be broadly construed 'in favor of those whom it was intended to protect.'" Wagner Seed Co. v. Bush, 709 F. Supp. 249, 252 (D.D.C. 1989) Aff'd, 946 F .2d 918 (D.C. Cir. 1991). See also Sutherland State Const. Section 60.01 (5th ed. 1992)(remedial statutes are to be 'liberally construed to suppress the evil and advance the remedy')."

PLAINTIFF COULD NOT BE FIRED IN A JOB RELATED INJURY AND FRCP 56(F) SHOWS PLAINTIFF HAD THE RIGHT TO DEMAND ANY RECORDS IN AGENCY'S POSSESSION "TO MAKE HIS CASE WHOLE!" National Life Ins. Co. v. Solomon (1975, CA2 NY) 529 F2d 59.

Agency's Appendix H-1 through H-3 as there record before the Court proves the Inspector General Report Appendix G-3 that said "firing" Officials are "tainted Officials!" The IG report says:"THE INQUIRIES." What inquiries? The February 20th, 1995 letter! What Happen? The IG says:"The inquiries into your allegations have raised the conscience level of all concerned!" Plaintiff was RETALIATORY DISCHARGED!

Plaintiff beg for "The substantially innocent" standard in the interest of Justice! Yorkshire v. Merit Systems Protection Board, 746 F .2d 1454, 1457 (Fed. Cir. 1984).

AGENCY CANNOT LEGALLY DENY WORKERS' COMP.

IN THE

SUPREME COURT OF THE UNITED STATES

Granting the Petition:

Congress said over 21 years ago in forming Title 5:"How critical it is that we retain protection for Veterans once they have been employed!" Congressional Record, August 10, 1978, page 25573. Congress knew 21 years ago:"There is no effective means other than drawn out administrative and court proceeding for a Whistleblower to set things right!" (6 yrs come March 2000), Congress went on to say:"We all lose when reasonable and constructive criticism of agencies by those who know them best is stiffled!" Id 25727.

This sitting President has put into place Public Law 103-353, Section 4311 (2) Which states emphatically:"The prohibition in paragraph (1),"Discrimination/Acts of Reprisal Prohibited)" shall apply with respect to a person regardless of whether that person has performed service in the uniformed services!"

Then there is the provisions of the Fifth and Fourteenth Amendments of the Constitution that no person shall be deprived of "property" by the State or Federal Government without due process of law has been construed to include one's 'legitimate entitlement to a job.'" See Board of Regents v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33L. Ed. 2d 548 (1972).

In 1985, The Supreme Court reiterated in Cleveland Board of Education v. Loudermill, "that (a)n essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985).

PLAINTIFF PRAY THAT THE SUPREME COURT VACATE AND REVERSE Fed. Cir. Court of Appeals;

Therefore, Respectfully submitted

Plaintiff

PROOF OF SERVICE

I, Randolph Crews, do swear or declare that on this date, January 5, 2000, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED AS A VETERAN and PETITION FOR A WRIT OF CERTIORARI on each party to said proceeding or that party's counsel, and on every other person required to be served, by depositing same in the United States mail with first-class postage prepaid.

The names and addresses of those served are as follows:

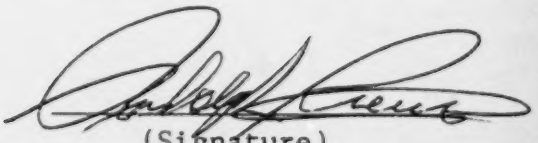
MARIAN E. SULLIVAN
Attorney for Respondent
Department of Justice
Civil Division, 8th Fl
1100 L Street,NW
Washington, DC 20530
Tele: (202) 307-6288

Other

Majorie Marks
U.S. Office ofPersonnel Mgr.
Employee Relations Division
1900 "E" Street, NW, R-7412
Washington, DC 20415

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 01-05, 2000



(Signature)